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INTERSTATE COMMERCE EXISTING ACCORDING TO THE FORM RATHER THAN THE NATURE OF TRANSACTIONS.

The power of Congress, under the commerce clause, is exercisable upon the view that commerce between the states should be unrestricted, or restricted only as restriction may be beneficial or harmless according to congressional view.

A recent decision by the federal Supreme Court enforces, as seems to us, the view that restriction by state law must be, if not expressly, at least clearly, prohibited or Congress permits it. *Banker Brothers Company v. Commonwealth of Pennsylvania*, 32 Sup. Ct. 38.

Thus the facts in that case show, that a manufacturer in New York had an arrangement with a corporation in Pennsylvania, whereby the latter was authorized to sell the former's automobiles. Where the latter took an order for an automobile the former either accepted the order or not at its pleasure. If accepted, the former made the automobile and shipped it to the latter at list prices, less 20 per cent. When shipment would be made draft would be sent with bill of lading attached. The Pennsylvania corporation made its contracts with purchaser as it pleased. The manufacturer warranted the machine direct to the purchaser.

The Supreme Court upheld the ruling of the Pennsylvania Court that the Pennsylvania company was liable upon sales under this arrangement upon the ground that they were not interstate transactions.

Justice Lamar, rendering the opinion, from which there was no dissent, said: "This is one of the common cases in which parties find it to their interest to occupy the position of vendor and vendee for some purposes under a contract containing terms, which, for the purpose of restricting sales and securing payment, come near to creat-

ing the relation of principal and agent. But, as between Banker Brothers Company and the Pittsburg purchaser, there can be no doubt that it occupied the position of vendor. As such it was bound by its contract to him, and under the duty of paying to the state a tax on the sale."

Then the court argues, the manufacturer would have no right of action against the purchaser and "the fact that he was liable for the freight by virtue of the agreement to 'pay the list price f. o. b. factory did not convert it into a sale by the manufacturer at the factory; neither was that result accomplished because, with the machine, Banker Brothers Company also delivered to the buyer in Pittsburg a warranty from the manufacturer direct."

It must be conceded, we think, that the purchaser was affected with notice that a shipment was made by a seller in another state upon his order, that he was to pay freight on a foreign shipment and to receive a warranty, presumptively on a consideration, by the foreign seller.

Under these circumstances, it would seem there was some notice to him of an agency on the part of the local seller and a ratification on the part of the foreign seller of the acts of the local seller. The foreign seller, indeed, connects himself with the local seller's acts by his warranty under the rule of *respondeat superior*.

But these incidental elements of agency fade away in the face of the major contract between the Pennsylvania company and the local purchaser, and the court holds that, as the contracts were made by a vendor to vendees in Pennsylvania and were there to be performed, the transactions were not interstate. While this is in every way true, yet we think that no practical reason may be given why a state tax upon sales by the manufacturer direct to purchasers, or through its agent, *eo nomine* would be less an interference with the free flow of commerce than in such sales as were being considered.

The opinion says: "The purchaser was not concerned with the question as to how

the machine was acquired by his vendor, or whether that company bought from another dealer in the same city or from the manufacturer in New York."

This seems to us a curious statement. If he was not concerned, why mention him at all? If the statement is useful, it enforces the idea that regulation by Congress of interstate commerce or the state's taxation upon articles in interstate commerce forbidden by the commerce clause *ex proprio vigore*, means in regard to interstate commerce in the strict legal sense of the phrase.

We have thought that the trend of federal decision is to allow Congress to regulate pretty nearly everything, that has almost any relation to interstate commerce, and it may be, that were Congress to say opinion we are commenting on, should stand like direct sales, the regulation would be sustained.

But this would seem to be to extend constitutional expression, and really add other things to the commerce clause. If, however, this could not be done, it would appear quite evident, that federal power adequately to protect interstate commerce, is subject to a serious exception.

Statutes as to safety appliances and employers' liability have not nearly so close a relation to interstate commerce as a statute attempting to include such transactions in interstate commerce. It is one of the fundamental things, that states shall lay no imposts or taxes on interstate or foreign commerce, and, if it be said, that Congress may not prohibit such imposts or taxes on what is, in substance, though not in strict form, such commerce, then for it to have the power to prescribe as to more remote matters would seem anomalous.

NOTES OF IMPORTANT DECISIONS

RAILROADS—ABSOLUTE DUTY TO KEEP COUPLERS IN REPAIR UNDER THE SAFETY APPLIANCE ACT.

Regarding the safety appliance laws, the case of *Delk*, v. St. L. & S. F., reported in advance sheets of the United States Supreme Court

(Law Ed.), July 1, 1911, (page 617), is probably a conclusive construction of the Act, and in this connection, the case of *C. B. & Q. v. United States*, on page 612 of the same volume, is instructive. In the *Burlington* case the action is by the United States to recover penalties. The *Delk* case was for personal injuries.

In the *Burlington* case the holding is, as stated in the syllabus: "A carrier using, in moving interstate traffic, cars whose condition does not satisfy the requirements of the safety appliance acts cannot escape the penalty therein prescribed by showing that it exercised reasonable care in equipping its cars with the required safety appliances and used due diligence to keep them in repair by the usual inspection, but the statutes impose an absolute duty upon the carrier, which is not discharged by the exercise of reasonable care or diligence."

In paragraph 2 of the syllabi in the *Delk* case the gist of the holding is given in these words: "An absolute duty to provide every car used in moving interstate traffic with automatic couplers and to maintain them in proper condition at all times and under all circumstances is imposed upon interstate carriers by the Safety Appliance Act of March 2, 1893, which was not discharged by properly equipping the car with automatic couplers and using due diligence to keep them in good working order."

The provisions of the statute make it unlawful "for any such common carrier to haul, or permit to be hauled or used on its line, any car used in moving interstate traffic not equipped with couplers coupling automatically by impact and which can be uncoupled without the necessity of men going between the ends of the cars." The 8th section of the Act provides that where there is a violation of the requirements for equipment, injured employees shall not be deemed to have assumed the risk, "although continuing in the employment of such carrier after the unlawful use of such locomotives, car or train had been brought to his knowledge."

The opinion in the *Delk* case reverses the judgment of the United States Circuit Court of Appeals, 170 Federal 556. That Court held that "a reasonable construction of the Safety Appliance Act is that if the railroad company equipped all its cars with uniform and standard height draw-bars when such cars were first built and turned out of the shops, then that thereafter the defendant is only bound to use ordinary care to maintain such draw-bars at the uniform and standard height

mentioned in the testimony." But, as opposed to this view, it was contended that "under the Safety Appliance Act it is immaterial whether the defendant had notice of the defect or had used ordinary care to present this and similar defects from arising." It will be noted that the Court, in the two cases under consideration, adopted the latter view. And in the opinion in the Burlington case it is said: "We need not enter into the wilderness of cases upon the common law duty of the employer to use reasonable care to furnish his employee reasonably safe tools, machinery and appliances," because under the statute the duty is imperative and "we have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described." Further it is said, speaking of the Courts: "They have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the constitutional power of the law-making body."

In these two opinions there is an exhaustive review of the cases upon the safety appliance laws, and it seems the final word is that nothing will excuse absolute compliance with a most strict construction of the Safety Appliance Law; that even if, while running, a bolt of lightning should destroy one of these safety appliances and injury should result therefrom, the carrier would be liable; or, if after the most careful inspection it is established that all the equipment is in first-class condition and complies in every respect with the laws, yet if, within a minute after such inspection, some miscreant secretly, and without knowledge on the part of the carrier or any of its servants, places out of order one of these appliances the company is responsible for personal injuries resulting, or for penalties for using the car so out of order.

The language of the Sherman Anti-Trust Act, construed in the recent Standard Oil and American Tobacco cases, is fully as concise, definite and positive as the language of the Safety Appliance Act, but in those cases the Court goes back into the history of common law decisions and finds a basis for saying that Congress intended only an "undue" or "unreasonable" restraint.

It would seem that there is as much ground for saying, as to the safety appliance acts, that after the cars are once properly equipped the duty of the carrier is to use a reasonable, or even high degree of care to see that the appliances are kept in repair and properly maintained, as there is in the anti-trust act to

say that the restraint referred to must be "undue" or "unreasonable."

G. E. M.

BANKS AND BANKING—INDORSING CHECK PAYABLE TO GRANTOR IN FORGED DEED AS FORGERY OF CHECK.—The case of *Russell v. First National Bank*, 56 South 868, decided by Appellate Court of Alabama, appears to us to hold a bank upon which a check is drawn, responsible to the drawer under a sort of presumption that ought not to have been applied.

It appears that one Frank Framhold, residing in Cincinnati, owned a tract of land near Hartselle, Alabama, upon which he had been paying taxes a number of years. He had an uncle of the same name living in Birmingham. A would-be purchaser of the land inquired of one Harris, a former deputy assessor, who knew the Cincinnati Framhold was the owner, if he knew the owner and he told him the Birmingham Framhold was, and that the land was for sale for \$640. The price being satisfactory, Harris said he would go to Birmingham and get the deed signed by the Framhold living there. He produced a deed purporting to have been duly witnessed by two witnesses and acknowledged by a notary public in Birmingham. The purchaser gave to this former deputy a certified check payable to Frank Framhold. The check was negotiated in Birmingham, appearing to have been indorsed by Frank Framhold, Harris, Hopkins and the First National Bank of Birmingham, the bank guaranteeing all prior indorsements. About a year afterward, the Cincinnati Frank Framhold came to Hartselle and learned for the first time about the transaction. The supposed purchaser, disclaiming title to the property, sued the Hartselle bank. There was judgment for the bank and the Appellate court reversed and remanded the case.

The court treated the indorsement as a forgery, and the bank to be held.

In arriving at this conclusion, the court said: "If Frank Framhold, (of Birmingham), indorsed the check, he was guilty under the undisputed evidence, of forgery, and as there is no evidence whatever that he did indorse it, we cannot presume that he did so. The presumption of the law, on the contrary, is that he did not." But the trial court admitted the deed in evidence for the purpose of comparison of signature. The court said, however, that as Frank Framhold, the owner, never signed that deed, the deed and the acknowledgment were absolutely void and being such it could not be used for comparison.

This reasoning we are unable to follow.

It certainly appears that the drawer expected a deed to be signed by a Frank Framhold of Birmingham. A deed witnessed and acknowledged was presented to him. The acknowledgment was *prima facie* proof of identity. For the person thus identified a certified check was obtained. It was intended by the drawer to be paid to that person. He was the selected payee. The guaranteeing bank guaranteed the identity of the man for whom the check was intended. Where was there any forgery of a check, even if it be admitted there was forgery of the deed? We doubt even if the deed was forged. It would seem rather the obtaining of money under false pretenses. The signer was not passing himself off as another man when he signed or acknowledged the deed. The name was both duly and truly witnessed and duly and truly acknowledged. The signature was not used as that of another. It is said there is forgery if the intent be to have the instrument received as that of another and the instrument may be of legal efficacy, 13 Am. and Eng. Encyc. Law, 1089. Here there was no false personation. The signer personated himself; he intended the signature as that of himself. He signed it as a resident of Birmingham and not as a resident of Cincinnati. He distinguished himself from the other Framhold as thoroughly as if he had been John Smith and signed his true name. With the purchaser's misinformation, he would not have taken a deed from Framhold of Cincinnati, and the check was not intended for him. Why make a bank repay a check when it has once paid it to the intended payee?

THE RECALL OF JUDGES—DISTINGUISHING THE CASE OF TAYLOR v. BECKHAM.

Suggestion has been made that in preparing the article of September 8th, respecting "The Recall of Judges" (Cent. L. J., Vol. 73, p. 167), I treated the subject *unfairly*, in that I did not note the case of Taylor v. Beckham, 178 U. S. 548-609.

That case was a contested election for the office of governor of the State of Kentucky, the constitution of which state provided that in a contest for that office, the two branches of the legislature should determine who had been elected, and this constitutional provision had been in force and operation for one hundred years; constituted due process of law. The two houses of that legislature upon contest made, met and determined that Goebel and Beckham had been elected, and they were accordingly

sworn in respectively as Governor and Lieut. Governor. Taylor and Marshall, the Republican contestees, when the election occurred, were duly awarded certificates of election by the State Board of Election Commissioners, but when the contest was determined as aforesaid, Goebel and Beckham entered upon their duties as Governor and Lieutenant Governor, but Taylor and Marshall notwithstanding the determination aforesaid, usurped the offices of Governor and Lieutenant Governor and refused to surrender the records, archives, journals, etc., pertaining to the office of governor and the possession of the executive offices at the capitol. Whereupon Goebel having been murdered, Beckham instituted under the statutes of Kentucky, a suit in a Circuit Court of that state, in the nature of quo warranto, charging usurpation of the offices of Governor and Lieut. Governor and asking that Taylor and Marshall be ousted therefrom. Beckham was successful in the Circuit Court and also on appeal in the Court of Appeals of the state. Taylor and Marshall thereupon brought the case on error to the Supreme Court of the United States, where the cause was dismissed for want of jurisdiction. Here was a *simple case* of a contested election conducted in a manner ordained by the constitution and laws of Kentucky, as decided by the court of last resort in that state, and no attempt had been made by that State to *abolish* either the office of governor or Lieut. Governor, consequently, any remarks made touching the latter point, were *utterly irrelevant to the matter at issue*. Even great courts sometimes sidestep into obiter. And Mr. Justice Brewer in a dissenting opinion aptly, in substance, points out that while it is doubtless true that a state barring constitutional objections, may abolish an office and thus leave the whilom occupant without either recompense or redress, inasmuch as *between* such occupant and the state there exists no property right in an office, yet that as *between* two contesting claimants such right of property does exist, both as to office and salary, which the state cannot arbitrarily take away and give to one of such claimants, without due process, as had theretofore been decided by that court.

And on this property right feature, Mr. Justice Brown and Mr. Justice Harlan concurred. Ex parte Garland, 4 Wall. 333-399, was a case where Garland was excluded from the practice of his profession as attorney and counselor at law, in consequence of his inability and failure to take the expurgatory oath as required of attorneys as to past offenses, by the Act of Congress, and such act was held to be a *bill of attainder*. In that case, Mr. Justice Field

observed: "Attorneys and counselors are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature. The attorney and counselor being by the solemn judicial act of the court clothed with his office, does not hold it as a matter of *grace* and *favor*. The right which it confers upon him to appear for suitors and to argue causes, is something more than a mere *indulgence revocable* at the pleasure of the court or at the command of the legislature. It is a *right* of which he can only be deprived by the judgment of the court, for moral or professional delinquency." "That this result cannot be effected indirectly by a state under the form of creating qualifications, we have held in the case of *Cummings v. Missouri* (Ante 356) and the reasoning by which that conclusion was reached applies equally to similar action on the part of Congress."

If the right of office be thus vested in an attorney and counselor by reason of his admission as an "officer of the court" to be a member of the bar, would not the right of the judicial office of that court, to-wit, that of the judge, be equally impregnable to all assaults except those made by due process of law?

Take another illustration: A certificate of title to an office may be obtained from the proper authorities, which gives the claimant thereof a prima facie title to the office, and this certificate may ordinarily be obtained by mandamus, 29 Cyc. 1417.

An action lies to try title for the recovery of an office, and a contesting candidate may resort to such an action without resorting to mandamus, 1418 Ib.

When the action is brought by a private party, such party must show prima facie title in himself and his petition must set forth such facts which show such title, Ib.

Under the standards of our language: Title, that which is the foundation of ownership or property; a right. Webster Dict. Right, that to which one has a just claim; that which justly belongs to one; the interest or share which anyone has in a piece of property; title, claim; interest; ownership. Ib.

So it will be perceived right and title and ownership are synonyms.

A man can no more maintain an action to recover an office without a title or right thereto, than he can a title or right to a tract of land. And such right or title must be equally well vested in the one case as the other. From this it indubitably follows that the right relied on, must be a vested or property right in the successful contestant. This is indeed shown by the very form of the judgment which is entered on behalf of the successful suitor or contestee.

Does it not seem a solecism to say that because the state may abolish an office, that therefore, where the office remains undisturbed, neither contestant nor contestee has any right, title, ownership or property therein?

If so, on what basis shall suit be brought for its recovery or on what basis such action be defended?

T. A. SHERWOOD.

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THE LAW AS TO TRADE SECRETS.

The X Company was engaged in the manufacture of powder by a secret process upon which no patent had been obtained. The company employed A as its chemist, one of the terms of the contract being that all knowledge or information which might be acquired by A while connected with the company in any capacity, relative to the mode of doing business, and processes of manufacture should be received in strict confidence by him and for the exclusive benefit of the X Company, and that no secrets of the business should ever be disclosed by him to any outsider. A, during the course of his employment, acquired knowledge of the secret process used by the X Company. He resigned his position, went to the Y Company, a rival of the X Company, and offered to sell this process which he claimed to have invented. The Y Company knew nothing of his former employment and in perfect good faith bought the secret, and began to manufacture powder by the process.

May the X Company enjoin the Y Company from using the process so obtained?

Before attempting to answer this question, it seems fitting to solve two other simpler questions which lead up to the one just put.

1. Suppose that 'A, instead of selling the secret, had proceeded to make use of it himself. Should he be enjoined?

2. Suppose that the Y Company knew the facts in the case or paid no value for the secret. Would there be any remedy against them?

The proper solution of any of these problems involves a consideration of the nature of a trade secret.

A trade secret consists of information which is valuable because it is known only to a few. The term, in its broader interpretation, may include a secret process, recipe, or formula; a list of customers,¹ the contents of a book upon which no copy-

(1) *Wicktoft and Holmes Co. v. Boyce*, 112 N. Y. S. 874.

right has been obtained,² or even private information as to stock quotations.³

It has been established by a reputable line of decisions in this country, beginning with *Peabody v. Norfolk*,⁴ that a trade secret is property. In that case the Massachusetts court, citing the English cases of *Yovatt v. Wingard*,⁵ and *Morrison v. Moat*,⁶ held that one who invents or discovers and keeps secret a process of manufacture whether or not a proper subject of patent, has in it an exclusive property which a court of chancery will protect against anyone who, in violation of contract and in breach of confidence, undertakes to apply it to his own use or to disclose it to third persons. This idea has been consistently followed in the later cases cited elsewhere in this article.⁷

Likewise, it has been held that a trade secret is the proper subject of sale and that the sale of the secret carries with it the right of protection against disclosure.⁸

Again, a contract to convey a trade secret is one which will be specifically enforced in equity.⁹ In cases of this kind the question is often raised as to whether contracts entered into by the seller not to disclose, etc., are in restraint of trade. It seems to have been well settled that such a contract cannot be attacked on that score.¹⁰

(2) *Palmer v. De Witt*, 47 N. Y. 532.

(3) *Gold Co. v. Todd*, 17 Hun. 549.

(4) 96 Am. Dec. 664.

(5) 1 Jacob and W. 394.

(6) 9 Hare 241.

(7) The case of *O'Bear-Nester Glass Co. v. Anti Explo. Co.*, 108 S. W. 969, may be disposed of under special considerations existing in the case.

(8) *Bell Foundry Co. v. Dodds*, 100 Dec. 154; *Simmons Medicine Co. v. Simmons*, 81 Fed. 163; *Vulcan Detinning Co. v. Am. Con. Co.*, 58 Atl. 290; *Stewart v. Hook*, 45 S. E. 369. In the case last cited we find this language: "It is well-settled that the discoverer of a medical preparation or formula, even though such preparation be not patentable, has, like an author or an inventor, a property right in the product of his mental labors. . . . It seems equally clear that such property, like any other may be transmitted by sale or otherwise by the discoverer to others."

(9) *Bryson v. Whitehead*, 1 Sim. and St. 74; *Moorehead v. Hyde*, 38 Iowa 382.

(10) *Fowle v. Park*, 131 U. S. 88; *Vickery v. Welch*, 36 Mass. 523; *Tade v. Gross*, 28 N. E. 469.

Nor is such a contract by an employee contrary to public policy.¹¹

Part I.—Being property of a peculiar kind, for the loss of which money damages would be inadequate and hard to estimate, it would seem to follow that a confidential agent or employee under contract not to disclose, should be enjoined from disclosing a trade secret, and the cases so hold.¹²

And the doctrine of these cases has been rightly extended to cases where employers were enjoined from disclosing secrets invented by such employees themselves during the course of their employment.¹³

There is a quasi-contractual duty arising out of the relationship and running from the employee to employer which equity will enforce and it makes no difference in such cases that the employee's duty is comparatively unimportant.¹⁴

A plaintiff in such case, if he choose to make use of his legal remedy should be allowed his action in tort against one who in breach of confidence discloses a trade secret. The tort is in the nature of a breach of duty arising out of the relationship existing between the parties. Action on the case is the proper remedy and so held in *Royston v. Woodbury Institute*.¹⁵ In that same case it was said that trover would not lie since the thing converted was neither tangible personal property nor tangible evidence of title to intangible or real property. In addition to getting his injunction,

(11) *Thum Co. v. Tlaczyski*, 72 N. W. 140.

(12) *Morrison v. Moat*, 9 Hare 241; *Peabody v. Norfolk*, 96 Am. Dec. 664; *Frohlich v. Despar*, 39 Atl. 521; *Solomon v. Hertz*, 2 Atl. 379; *Nut Food Co. v. Cemer*, 96 N. W. 454; *Magnolia Metal Co. v. Price*, 72 N. Y. S. 792; *Philadelphia Extract Co. v. Keystone Extract Co.*, 176 Fed. 830.

(13) *Eastman Co. v. Reichenbach*, 20 N. Y. S. 110; *Westervelt v. National Paper and Supply Co.*, 57 N. E. 552. It is universally held that no express contract by the employee not to divulge is necessary but that the law will imply one from the circumstances.

(14) *Little v. Gallus*, 38 N. Y. S. 1014; *Taber v. Hoffman*, 118 N. Y. 30; *Thum Co. v. Tlaczyski*, 72 N. W. 140; *Wiggins Sons Co. v. Cott-Lap Co.*, 169 Fed. 150.

(15) 122 N. Y. S. 444.

a plaintiff in such a case should be allowed damages if he can show that there were actual damages.¹⁶

Of course it goes without saying that the communication of a trade secret to one employed in a confidential capacity is not such publication that after that time the public are free to make use of the secret.¹⁷

Part II.—When we come to consider third parties, various situations are suggested. It may be that the third party has colluded with the confidential employee, and induced him to disclose the secret in breach of his confidence. In fact it would be safe to say that a majority of cases which have arisen on this point have been based on facts similar to those just stated. In such case the third party so colluding is guilty of a legal wrong in the nature of a tort for inducing the employee to violate his quasi-contractual obligation or to break his express contract as the case may be.

For the same reasons suggested in Part I, equity has concurrent jurisdiction and will restrain such third person from making use of the secret so obtained.¹⁸

Equity will not only enjoin, but defendant will be made to account for profits made by the use of this secret.¹⁹

If the confidential agent tells the secret to the third party but receives no value for it and such third party has no knowledge of the relationship, there is no legal wrong so far as he is concerned, but it would seem to present a proper case for the exclusive jurisdiction of equity. The

big principle underlying this whole matter is that equity will not allow one man unjustly to enrich himself at the expense of another. So the solution to our first two cases is easy even granting that legal title to the trade secret passes to the employee or third person.

Part III.—The case which is really difficult is the one where the third party buys the secret from the agent in good faith or buys the manufactured substance and by analysis discovers the secret process of manufacture.

These cases should doubtless be treated separately. In the latter case, the owner of the process has placed his wares upon the market and has invited the public to buy. Having taken no measures to protect his secret, he has virtually estopped himself from denying its publication. He has given his secret to the public and must take the consequences.²⁰ It is not contended that this estoppel theory is the only one upon which to support this line of decisions, but this much may be said that in the former case this feature is eliminated.

It frequently happens that a manufacturing company puts out a product by the analysis of which the process of its manufacture could not be found out. Now, suppose the confidential employee who has knowledge of such process sells such knowledge to a bona fide purchaser. In such case the owner has made no representation to this third party and has taken no inconsistent position. Nor can you say that he is negligent in entrusting this secret to his employees, for such confidence is necessarily incident to the business as carried on.

The case thus far decided indicates the tendency of the courts to decide this case in the same way as the case where the secret is found out by analysis.²¹

It is interesting in this connection to

(16) *Wiktor v. Great Atlantic and Pacific Tea Co.*, 124 N. Y. S. 956; *Watkins v. London*, 54 N. W. 193.

(17) *Kingsley Co. v. Chicago Board of Trade*, 198 U. S. 236; *Hunt v. N. Y. Cotton Exchange*, 205 U. S. 322.

(18) *Tabor v. Hoffman*, 188 N. Y. 30; *Peabody v. Norfolk*, (supra); *Stewart v. Hook*, 45 S. W. 369; *Stone v. Goss*, 35 Atl. 736; *Taylor Iron & Steel Co. v. Nichols*, 66 Atl. 695; *Eastern Extracting Co. v. N. Y. Extract Co.*, 110 N. Y. S. 738.

(19) *International Reg. Co. v. Recording Fare Reg. Co.*, 151 Fed. 199; *Elatelite Paint Co. v. Frost Co.*, 117 N. W. 388. Again, if the third party acquired his information by means of a trespass, we should have a case of concurrent jurisdiction, and the rule suggested above should apply.

(20) *Tabor v. Hoffman*, (supra); *Park v. Hartmann*, 153 Fed. 24.

(21) *Stewart v. Hook*, 45 S. E. 369; *Elatelite Paint Co. v. Frost Co.*, 117 N. W. 388; *Watkins v. London*, 54 N. E. 193; *Chadwick v. Covell*, 23 N. E. 1068; *Pomeroy Sub. Co. v. Pomeroy*, 78 Atl. 698; *Vulcan Detinning Co. v. Amer. Can Co.*, 58 Atl. 290.

notice the language used by the various courts. In *Tabor v. Hoffman*,²² the court says: "If a valuable medicine not protected by patent, is put upon the market anyone may, if he can, by chemical analysis and a series of experiments, discover the ingredients and their proper proportions and may use the process without danger of interference, but because this discovery may be possible by fair means it would not justify a discovery by unfair means such as the bribery of a clerk who, in the course of his employment, had aided in compounding the medicine and had thus become familiar with the formula." In *Park v. Hartman*,²³ we find the language: "A trade secret or medical formula protects its owner only against disclosure and, as we have already seen, one is free not only to use the process or formula, if discovered by skill and investigation, without breach of trust, but to make and sell the thing or preparation as made by the process of formula of the original discoverer, if that be the truth." The old case of *Morrison v. Moat*,²⁴ contributes the following: "The defendant derives under that breach of faith and contract, and I think he can gain no title by it. It might, indeed, be different if the defendant were a purchaser for value of the secret without notice of the obligation affecting it."

It was decided in *Vulcan Detinning Co. v. American Can Co.*,²⁵ that where one becomes bound by contract or confidence to another not to reveal a trade secret possessed by the other, he cannot in a suit to restrain him from utilizing such trade secret, set up that the complainant had no right to it because it had been obtained honestly from owners who had dishonestly obtained the knowledge from the discoverer.

Two of the cases nearest in point are *Chadwick v. Covell*²⁶ and *Stewart v. Hook*,²⁷ and both of these cases hold that

the defendant may be restrained only when it can be shown that he is doing something in fraud of the plaintiff's rights.

The case of *Stewart v. Hook*²⁸ was a case where one Tilden manufactured and sold an opium cure of which he was the inventor and sole owner. Tilden sold to the plaintiffs his interest in the opium cure, including all formulas, receipts, etc., and covenanted not to manufacture any medicine under the name used for the opium cure and not to reveal any secret of manufacture. Later Tilden, in violation of his covenant and of the plaintiff's rights, sold the formulas to defendants who proceeded to use them in manufacturing an opium cure and selling it under its original name. There was no allegation that the defendants came by their knowledge of the formula in any unfair way or that they committed any fraud or breach of trust of which the plaintiffs could complain. Upon these facts the Georgia court refused to enjoin the defendants. The following language of the court is significant: "The property right in an unpatented preparation, however, is not an unqualified one and is only exclusive until, by publication, it becomes the property of the public. In other words, the discoverer may keep his formula a secret and no one may by fraud or artifice obtain his secret from him. * * * If, however, one honestly and fairly comes into possession of the formula of an unpatented preparation, he has the right to use it and to sell it and equity will not restrain him from so doing."

The cases cited show the overwhelming weight of authority favoring a negative answer to the query put at the outset. On what proper theory can we support the case? If we treat a trade secret as we would a tangible chattel, we would be forced to say that the purchaser from a thief acquired no title and so a purchaser of a

(22) 188 N. Y. 30.

(23) *Supra*.

(24) 9 Hare 241.

(25) 58 Atl. 290.

(26) 23 N. E. 1068.

(27) 45 S. E. 369.

(28) *Supra*.

secret process from one who in the course of his confidential employment had virtually stolen the process from his employer could not hide himself under the cloak of a b. f. p. It might be answered that the employer has entrusted the employee with possession of the secret and so there is no larceny. But did the employee obtain title? Thereby hangs the answer to our query. On the other hand we would be slow to admit that the right of the owner of a trade secret was only an equitable right. It is clear that he has a legal property right in such secrets. At what point does his right change from a legal right to a mere equity?

All the earlier decisions seem to go off on the broad general doctrine of fairness. It is not until we come to the case of *Pomeroy Sub. Co. v. Pomeroy*,²⁹ that we find the court theorizing about the matter. In that case the New Jersey court said: "The nature of the right of an inventor or discoverer to a process of manufacture or a composition of matter which has been invented, or discovered is well settled. Such invention or discovery does not of itself confer upon the discoverer an exclusive property right good against all the world as does the ownership of tangible chattels. * * * But he has a kind of property right in his discovery or invention which he may transfer either absolutely or to a limited extent. Such transfer will pass to the vendee the title either absolute or limited, against the discoverer but as against other than the vendor or transferor, the title depends upon the right of the inventor or discoverer, or his grantee, to prevent the use of the invention or secret process by persons claiming to use them, and this right of prevention is based on *special equities* or rights against such person which disentitle him to the use. If knowledge has come to such claimant fairly and honestly, and un-

der circumstances which give the inventor no personal claim against him, the use will not be enjoined. In most cases this equity against the use is based on the confidential communication of the invention or process by an employer to employees, and in this case the employee or his grantee will be enjoined from using or communicating the process or invention of his employer."

This court, in the *Pomeroy* case, refers to the right against third persons as an *equity*. In the light of the cases cited it is submitted that the true theory is that although a trade secret is property, it consists merely of information differing from ordinary chattels in that it is intangible and not capable of being dealt with as we deal with chattels generally. In case of a tangible chattel the purchaser from a thief is not protected, because the fault is with his *getting*. He may be in good faith and pay value but he gets nothing, for the thief has nothing to give him but possession and that is wrongful possession. In the case of a trade secret, the wrongdoer has possession in the form of knowledge and this it is impossible to take away. So it seems from the necessity of the case that in the case of property of this kind, there is no such thing as title as distinguished from possession. That being true, the wrongful employee has title which he passes on to his transferee, leaving only an equity in the true owner. If such transferee takes in good faith and for value he should be protected.

The language of the courts as to fairness, etc., it seems to me, should go no further in their interpretation than to include that maxim of equity that what one gets in good faith and for value equity will not take away. Having reached this conclusion, the general doctrine of bona fide purchasers would apply as to subsequent transferees and assignees.

A. W. WHITLOCK.

Missoula, Mont.

(29) 78 Atl. 698, a 1910 case.

DIVORCE—FAITH AND CREDIT CLAUSE.

Ex parte ALDERMAN.

Supreme Court of North Carolina, Dec. 20, 1911.

73 S. E. 125.

A judgment of a court of a sister state, which awards the custody of a child to the wife obtaining a divorce from her husband subject to the right of the husband to visit the child, and the child to visit the husband at reasonable times, has no extraterritorial effect, and the child, on becoming a citizen of North Carolina, is not under the control of the courts of the sister state, and such judgment is not entitled to full faith and credit, and in a contest for the custody of the child the courts of North Carolina are governed only by what is for the best interests of the child.

Appeal from Superior Court, Buncombe County; Webb, Judge.

Habeas corpus proceedings by William F. Alderman against Sarah E. Alderman to determine the custody of Hugh Alderman, an infant son of the parties. From a judgment awarding the custody to defendant, petitioner appeals. Affirmed.

BROWN, J. It appears from the findings of his honor that the petitioner and respondent were divorced by the courts of the state of Florida, where they resided in 1909 and 1910, at the instance of the respondent, upon the ground of willful, continued, and obstinate desertion by petitioner of his wife and only child, and the general custody of the child was awarded to the mother, who afterwards removed with her child to Brevard, N. C., where she now resides with her father.

(1) The custody of children in cases of the divorce and separation of their parents is a subject as delicate as any with which courts have to deal. The good of the child should be, and always is, the chief thing to be regarded and the governing principle which guides the judge. All other considerations sink into insignificance. Many cases and text-writers can be cited where the principle is announced that the physical, moral and spiritual welfare of the child is the only safe guide in cases of this kind; and the courts will be guided by those surroundings. In *re Lewis*, 88 N. C. 34; *Jones v. Cotten*, 108 N. C. 458, 13 S. E. 161; In *re Turner*, 151 N. C. 474. 66 S. E. 431; *Hurd on Habeas Corpus*, 528; *Schouler on Dom. Rel.* 248; 2 *Bishop, M. & D.* § 529; *Umlauf v. Umlauf*, 27 Ill. App. 378. One who reads the findings and the judgment of the just and learned judge who heard this matter in the court below must conclude that

no other consideration than the child's welfare influenced his decision to remand the child to the care of its best friend, the mother. The love of the mother for her child, regardless of conditions and environments, has been proven by the history of the ages, and, while her devotion can be counted upon almost unfailingly, it is sad to say that sometimes the tie between father and child is a different matter, and requires the strong arm of the law to regulate it with some degree of humanity and tenderness for the child's good.

But the petitioner contends that under the Florida decree he has a vested right in the partial custody of the child, which this court is bound to respect and enforce under the full faith and credit clause of the federal Constitution. That part of the decree of the Florida court which petitioner invokes reads as follows: "W. F. Alderman shall be allowed to visit said child at such times as may to said Sarah E. Alderman seem reasonable, and the child, Hugh, may visit the defendant, W. F. Alderman at such times and under such circumstances and conditions as are reasonable and expedient, and said child may at least be permitted to visit W. F. Alderman for two weeks at a time, etc., if W. F. Alderman so desires." The language used would seem to indicate that the mother is expected to exercise careful supervision and control over the child, and that her consent or permission is necessary before the child can visit its father even for two weeks at a time. But nevertheless, if the language used was compulsory in its terms, that clause of the decree is not such a judgment of another state which the courts of this state are bound to enforce.

(2) All states and governments possess inherent power over the marriage relation, its formation and dissolution, as regards its own citizens, and, as both the husband and wife were citizens of Florida and properly before its courts as parties to the suit, we must give full faith and credit to the annulment of their marriage. *Atherton v. Atherton*, 181 U. S. 155, 21 Sup. Ct. 544, 45 L. Ed. 794; *Haddock v. Haddock*, 201 U. S. 563, 26 Sup. Ct. 525, 50 L. Ed. 867.

(3) But the infant child of their union is not property, and the father can have no vested right in the child or its services under a decree divorcing the parents. Such decree as to the child has no extraterritorial effect beyond the boundaries of the state where it was rendered. The child is now a citizen of North Carolina, and, as such peculiarly under its guardianship and the courts of this

state will not remand it to the jurisdiction of another state, especially where, as in this case, it is so manifestly against the true interests of the child. "Minors are the wards of the nation, and even the control of them by parents is subject to the unlimited supervisory control of the state." 1, Tiedeman, State and Fed. Con. p. 325; *Starnes v. Mfg. Co.*, 147 N. C. 559, 61 S. E. 526, 17 L. R. A. (N. S.) 602. In the case it is said: "The supreme right of the state to the guardianship of children controls the natural rights of the parent when the welfare of society or of the children themselves conflicts with paternal rights." Therefore it follows that, when this child became a citizen and resident of this state and duly domiciled here, it is no longer under the control of the Florida courts. In the case of *Frank Bort*, 25 Kan. 308, 37 Am. Rep. 255, the full faith and credit clause of the federal constitution was invoked by the petitioner in support of his supposed right under a decree in another state. Mr. Justice Brewer (afterwards of the Supreme Court of the United States) denied the correctness of such position, saying: "This claim seems to rest on the assumption that the parents have some property rights in the possession of their children, and is very justly repudiated by the courts of Massachusetts." 2 Bishop on Mar. & Div. (5th Ed.) 204. The same question was before the Kansas court again in 1885, and it held that the decree of the foreign court in no manner concluded other courts of the state where the child is then residing as to the best interests of the child. *Avery v. Avery*, 33 Kan. 1, 5 Pac. 419, 52 Am. Rep. 523, citing and approving *In re Bort*. To the same effect is the decision of the Court of Appeals of New York in *People v. Allen*, 105 N. Y. 628, 11 N. E. 143. In *Wilson v. Elliott*, 96 Tex. 474, 73 S. W. 946, 75 S. W. 368, 97 Am. St. Rep. 928, the same question was considered by the Supreme Court of Texas, and it was held that the decree of the court of another state awarding the custody of a child was not binding upon the courts of Texas under the full faith and credit clause of the federal Constitution after the child had become domiciled in Texas. The court says: "Were the subject-matter of the decree property or a matter in which the parents were solely concerned, the decree would, by reason of said article, be entitled to the effect which the trial court has given it. But neither of these propositions is true. The child is not in any sense property of the parents. It is also equally well established that the government has an interest in the welfare and consequently in the question of the custody and environments of the child, as to this the rights

of the parents are entirely subordinate." See, also, *Legate v. Legate*, 87 Tex. 252, 28 S. W. 281; *State v. Michel*, 105 La. 741, 30 South. 122, 54 L. R. A. 927.

The judgment is affirmed.

NOTE.—*Faith and Credit Clause as to Decrees for Custody of Children Where New Domicile is Acquired.*—We find not many cases on this subject. We think the logic of law is against a decree having any effect whatever after acquisition of new domicile. The subject-matter of jurisdiction having passed out of jurisdiction, the old decree has become *functus officio* and the new status is *res integra* for full consideration by the court of a new domicile. The cases cited in the opinion are set out with some fullness, as follows:

The Supreme Court of Texas, in considering the question whether evidence prior to the foreign decree awarding custody was admissible and arriving at the conclusion that it was as merely corroborative of evidence to show a changed condition, discourses of the right of the court, in which the child has acquired a new domicile quoting 2 Bishop on Mar. & Div., 2d Ed., 1189, as sustaining the jurisdiction of the court of the new domicile on the ground that "new facts may create new issues." Then Bishop also says: "Nor, since the relation of parent and child is a status, like marriage, rightfully regulated by any state in which the parties are domiciled, does the order in one state operate as an estoppel of all future inquiry in the courts of another state wherein the child has acquired a domicile." *Wilson v. Elliott*, 96 Tex. 474, 73 S. W. 946, 97 Am. St. Rep. 928. This language of itself and also, in the connection in which it is used, seems to us to mean that, by the very fact of the acquisition of the new domicile, the court of the new domicile might change the custody though the facts in every other respect except change of domicile remained the same. And why should not this be so? The foreign court only adjudged about custody of a child retaining its domicile. It did not intend its decree should have, because it is not allowed to have, operation over a relation without its jurisdiction. When that situation ceased its operation ceased. Therefore, in considering the question anew, why should the court of new domicile be bound by adjudication even upon the same facts? In other words, change of domicile should itself be considered a revolutionary change of situation and circumstances, opening the entire question so that the new status should be adjudged according to the policy of the new domicile.

To illustrate how mere acquisition of new domicile might bring a different conclusion from that reached by a foreign court, we will suppose the decree rendered by a court in which father and mother stand with no presumption in favor of one over the other, and the new domicile says: "The father is regarded as the head of the family and the law commits the children to his charge in preference to the claims of the mother, or any other person." *Neville v. Reed*, 134 Ala. 317, 32 So. 659, 92 Am. St. Rep. 35.

It is true the best interests of the child is the guiding principle in Alabama as generally elsewhere, but that is not doing away with the father's presumptive right over that of the moth-

er and she is thereby brought to a stronger measure of proof that it is to the best interests of the child for her to have its custody, than is required of him.

In the Bort case, *supra*, Judge Brewer said that the claim under the faith and credit clause could not be admitted, but said expressly that the decision need not be based on that. Nevertheless he disposes of the case without its appearing there was any change of circumstances and the children are awarded to the mother, though the foreign decree awarded them to the father. He went entirely on the theory that the court could consider the best interests of the children.

In *People v. Allen*, *supra*, it appears that the parents were living in Illinois and the mother there brought suit for divorce. While it was pending, the father moved to New York, taking the children with him. She obtained a decree for divorce with award of custody of the children. She brought habeas corpus in New York and the lower courts similarly awarded her custody. The Court of Appeals rendered a *per curiam* opinion as follows: "We dismiss the appeal for the reason that the courts below, upon a view of all the existing facts relating to the welfare and interests of the infants, exercised their discretion in awarding to the mother the custody of the children; and, in so doing, gave to the Illinois decree not the force of an estoppel or the conclusive effect sometimes due to a judgment, but simply regarded it as a fact or circumstance bearing upon the discretion to be exercised without dictating or controlling it."

This view may have had reference to the fact that at the time of the rendition of the Illinois decree, the infants had a new domicile, and if so, it would not be very apt authority on the point involved in the principal case. However, as it seemed permissible to consider it for something, the case may be considered in point.

These cases all seem to recognize a continuing effect of the old decree, and so by way of estoppel does the next following case.

The extraterritorial effect of an order modifying a decree for custody of children was considered by Connecticut Supreme Court of Errors in *Morrill v. Morrill*, 77 Atl. 1. The facts in that case show that, while the wife was domiciled in Connecticut, she obtained a divorce with award of custody of the children. Thereafter she moved to Germany, taking her children with her, and there married a subject of that country. Her former husband applied to the Connecticut court for a modification of the decree as to custody. He was at the time of the divorce and when this application was made, living in New York. The decree was modified so as to require her upon his written request to bring or send the children under proper escort and at her expense to visit their father in Connecticut or New York. The court thought that as the wife had applied to the Connecticut court for the relief she obtained, she was bound to take notice that the right to annul or vary it for cause at the will of the court was reserved. "It scarcely lies in her mouth to now question its authority when invoked by her then husband, whom she summoned to its jurisdiction to exercise the authority thus reserved, although her voice is heard from without the confines of the state."

This reasoning seems not altogether conclu-

sive. She applied to the Connecticut court because it then had jurisdiction over the status of the children. The right to annul or vary was only reserved for so long as jurisdiction over that status continued. The court does not dispute that the cardinal rule is the interests of the children, but in this case it undertakes to decide as to those interests, upon a principle of estoppel against one supposably only appearing in behalf of those interests.

The court also considers the value of its order of modification, saying: "As far as the extraterritorial value of the new action is concerned, that matter will take care of itself under the principles of private international law. But the inability of a court to enforce its orders and decrees does not result in a lack of jurisdiction from an extraterritorial point of view. The want of jurisdiction and the want of power to enforce are two different things intraterritorially considered." This is true in a sense, but if there is no jurisdiction for private international law to consider a court ought not to act.

It is, perhaps, reasoning from convenience that there should be some recognition of continuing effect of the original decree, but, as we said before, there is a new status and that, for the full benefit of the children, ought to have no limitations put upon freest inquiry into it.

C.

CORRESPONDENCE.

SUIT AGAINST BANK ON CHECK AS A CONTRACT IN FAVOREM TERTII.

Editor Central Law Journal:

Referring to the discussion of the leading case in 74 Cent. L. J. 33, let me call attention to the case of *Rogers Commission Co. v. Farmers' Bank*, 140 S. W. 992, where it was held, first, that "there is no liability upon the part of the bank to the payment of the check of one of its depositors until the acceptance of the same by the bank, regardless of the state of the depositor's account," and second, that "the giving of a check upon a bank is not an assignment of the amount of it to the payee, upon which he could bring a suit against the bank for the payment."

The first dictum is declaratory of the law as understood by the court; the second is a statement of another rule of law cited in support of the first. That a check on a bank is not an assignment pro tanto of the drawer's deposit, nobody will deny. But those who claim that the holder of the check can sue the bank for payment thereof, do not rest their contention upon any claim of assignment. They contend that the original agreement between the depositor and the bank is distinctly a contract in *favorem tertii*.

Morse on Banks and Banking, par. 493 (not 493 as cited in C. L. J., 74, p. 34) "cites innumerable cases where the doctrine of such contracts have been recognized by American courts. One of the cases so cited is: *Carnegie v. Morrison*, 2 Met. 396, in which Shaw, C. J. says: "The position is, that when one person,

for a valuable consideration, engages with another by simple contract to do some act for the benefit of a third, the latter, who would enjoy the benefit of the act, may maintain an action for the breach of such engagement."

The question thus is: What did the bank engage to do when it received the drawer's deposit? No written agreement, not even a specific oral agreement was entered into. The contents of the contract must, therefore, depend upon what the bank held itself out as doing.

All banks, honoring checks, advertise that they receive deposits payable on check, and all deposits received by them are received upon these terms, unless a special agreement to the contrary is entered into.

What does it mean, that money is payable on check? Does it simply mean that the depositor, when he wants to draw some of his money, need not bring his bank book, but in its place may bring a check? Does a check simply mean a permission for the bank to pay to the payee and charge against the drawer? Or is it an order on the drawee to so pay and charge? Nobody questions that it is the latter, but even then it is said that no agreement, and consequently no obligation, exists between the drawee and the payee until the check has been accepted.

Those maintaining payee's right of action against the drawee do not rest it upon any contract between them, but upon the contents of the contract of deposit, which includes that any duly authorized payee shall have the same right pro tanto as the depositor. That the bank so understood the situation when the deposit was made is plain from the fact that it furnished its depositor with a check book with its own name as drawee and the following words printed therein: "Pay to the order of." If there was no obligation assumed to pay to anybody but the drawer, why should the words "the order of" be there. Suppose the check was drawn by the depositor to his own order and then endorsed by him to the order of his payee, would that make a difference?

In reading the decisions holding that the payee does not have a right of action against the drawee, one cannot help feeling, that the courts rather think it would be the proper thing to allow such right of action, but cannot grant it **because they cannot lay their hands** on a generally recognized principle or rule of law justifying the same.

The principle of contracts in *favorem tertii* is recognized in American law, but we do not have any name for it. Cannot somebody give this principle a good, terse English name?

If so, presto! The thing is done, and the payee on a check will have a right of action against the drawee refusing to pay, notwithstanding that it has sufficient funds of the drawer.

TERRESTER.

Philadelphia, Pa.

[Note.—There seems something of an inference that our correspondent is combatting the views of our annotator. This inference is not to be indulged, as a reading of our note, we think, will show. We would like to earn renown by coining the term our correspondent suggests and, in default of being able to do so, hope some of our readers may.—Editor.]

A CORRECTION.

Referring to 74 Cent. L. J., page 50, we call attention to the fact that the last paragraph, beginning: "A radical means," etc., should be preceded by the words "Mr. Brown." The paragraphs that follow are supposed to represent the answer of Mr. White, the radical lawyer—to the previous criticisms of Judge Black, the conservative jurist. We regret the mistake of the printer in this regard as it confuses the thought of the reader in the closing paragraph of a very well written article.

BOOKS RECEIVED.

McQuillin's Municipal Corporations. A Treatise on the Law of Municipal Corporations in six volumes. Volumes 1 and 2. Price, \$6.50. Chicago, Ills. Callaghan & Co. Review will follow.

The Law of Contracts. By Clarence D. Ashley, Professor of Law and Dean of the Faculty of Law in New York University. Price, \$3.00. Boston, Mass. Little, Brown & Co. Review will follow.

Elementary Law. By William Lawrence Clark, LL.B. Price \$5.00. New York City, N. Y. The American Law Book Company. Review will follow.

Reports Virginia State Bar Association, 1911. Twenty-third Annual Meeting of the Virginia State Bar Association, held at The Homestead Hotel, Hot Springs, Va., August 8th, 9th, 10th. Edited by John B. Minor of the Richmond Bar.

Examination of Missouri Titles. Being designed to give immediate information as to what should appear from the abstract of any transmission of title to real estate, at any date, in order that the abstract shall show a perfect record title. By E. B. Silvers, of the Kansas City Bar. Price, \$6.00. Kansas City Mo. Pipes-Reed Book Company. Review will follow.

HUMOR OF THE LAW.

Crawford—"I don't believe in the execution of boy murderers."

Crabshaw—"There's no fear of that. They're old men before the courts have finally decided their cases."—Brooklyn Life.

"I guess I'll make a lawyer of Josh," said Farmer Cornstossel.

"But your wife wants him to be a physician."

"Yes. He's got to be a professional man and we'd want to show our confidence in him. And I think it would be a heap safer to take Josh's law than his medicine."—Washington Star.

"My girl's parents won't let me see her. Can't I get out an injunction or some sort of law paper?"

"I should think a writ of attachment would be in order."—Louisville Courier-Journal.

WEEKLY DIGEST.

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1. **Alteration of Instruments**—Name of Payee.—The alteration of the name of the payee in a note, without the knowledge of the maker, is a material alteration.—*Wilson v. Barnard*, Ga., 72 S. E. 943.

2. **Assault and Battery**—Deadly Weapon.—To make the throwing of hot coffee upon a person an aggravated assault, it must have been done so as to make it a deadly weapon, or it must have inflicted serious bodily injury.—*Clark v. State*, Tex., 140 S. W. 779.

3. **Attachment**—Shares of Stock.—Stock owned by a nonresident debtor in a domestic corporation held subject to attachment under the statutes, though the certificates of stock were not within the jurisdiction of the court.—*Bowman v. Breyfogle*, Ky., 140 S. W. 694.

4. **Wrongful Levy**—A party can recover exemplary damages for the wrongful levy of an attachment only on proof that the person suing out the writ acted maliciously and without probable cause.—*J. M. Carlton Bros. & Co. v. Carter*, Tex., 140 S. W. 827.

5. **Attorney and Client**—Lien.—Notice of an attorney's lien need not state the details of his employment.—*Cheshire v. Des Moines City Ry. Co.*, Iowa, 133 N. W. 324.

6. **Bailment**—Ordinary Care.—One who leased moving picture films for use was a bailee, and as such only bound to exercise ordinary care in using the films.—*Miller v. Miloslawsky*, Iowa, 133 N. W. 357.

7. **Bankruptcy**—Computing Interest.—The rule in bankruptcy for the computation of interest on claims to the date of the filing of the petition has no application to a solvent estate.—*Johnson v. Norris*, C. C. A., 190 Fed. 459.

8. **Hindrance and Delay**—Though a bankrupt intended to hinder and delay her creditors by making a certain assignment, it could not be set aside by the trustee unless there was legal fraud upon the part of the assignee.—*Clowe v. Seavey*, 131 N. Y. Supp. 817.

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